

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO**

THOMAS CARNES, by and through his  
Guardian ad Litem, Juliana Christine Clegg,  
on his own behalf and on behalf of others  
similarly situated,

**Plaintiff,**

VS.

ATRIA SENIOR LIVING and DOES 1  
Through 100,

## Defendants.

Case No. 3:14-cv-02727-VC

**[PROPOSED] FINAL JUDGMENT AND  
ORDER APPROVING CLASS ACTION  
SETTLEMENT**

Date: June 30, 2016

Time: 10:00 a.m.

Place: Courtroom 4

Judge: Hon. Vince Chhabria

1       On or about June 30, 2016, this Court granted Plaintiff's motion for class action settlement  
 2 approval and separate application for attorneys' fees, reimbursement of litigation costs and service  
 3 awards to the named Plaintiff (herein "Final Approval Order"). In accordance with the Final  
 4 Approval Order and the parties' Stipulation of Settlement filed February 11, 2016, Dkt. No. 93-3,  
 5 (herein "Stipulation"), and good cause appearing,

6           IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

7       1.       This Final Judgment and Order ("Judgment") incorporates by reference the  
 8 definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth  
 9 in the Stipulation unless set forth differently herein. The terms of the Stipulation are fully  
 10 incorporated in this judgment as if set forth fully here.

11       2.       The Court has jurisdiction over the subject matter of this action and all Parties to  
 12 the action, including all Settlement Class Members.

13       3.       As set forth in the Final Approval Order, which is incorporated herein, the Court  
 14 approves the settlement as set forth in the Stipulation, and finds that the settlement is in all  
 15 respects fair, reasonable, adequate and just to the Settlement Class Members.

16       4.       Pursuant to Federal Rules of Civil Procedure, Rule 23(c), for purposes of  
 17 settlement only, the Court certifies the following Settlement Class: Plaintiff and all similarly  
 18 situated persons who resided at one of the California assisted living facilities owned, managed  
 19 and/or operated by Defendant at any time between June 12, 2010 through and including March 17,  
 20 2016 (the "Class Period"). Excluded from the Settlement Class are: (i) Defendant and its  
 21 officers, directors and employees; (ii) any person who files a valid and timely Request for  
 22 Exclusion, as described in more detail below; and (iii) the Judges to whom this Action and the  
 23 Other Actions are assigned and any members of their immediate families.

24       5.       Excluded from the Settlement Class are all persons who submitted valid requests  
 25 for exclusion who are listed on **Exhibit 1** attached hereto. The persons listed in **Exhibit 1** are not  
 26 bound by this Judgment or the terms of the Stipulation.

27       6.       Pursuant to Federal Rules of Civil Procedure, Rule 23(c)(3), for purposes of  
 28 settlement only, all such Persons who satisfy the Settlement Class definition above, except those

1 Persons who timely and validly excluded themselves from the Settlement Class, are Settlement  
 2 Class Members bound by this Judgment and the terms of the Stipulation.

3       7. Pursuant to Federal Rules of Civil Procedure, Rule 23(a), for purposes of  
 4 settlement only, the Court finds that Plaintiff Thomas Carnes, by and through his Guardian Ad  
 5 Litem and legal successor, Juliana Christine Clegg, on his own behalf and on behalf of others  
 6 similarly situated, is a member of the Settlement Class, has claims typical of the Settlement Class  
 7 claims, and will fairly and adequately protect the interests of the Settlement Class throughout the  
 8 settlement approval proceedings in the Action. Accordingly, Thomas Carnes, by and through his  
 9 Guardian Ad Litem and legal successor, Juliana Christine Clegg, on his own behalf and on behalf  
 10 of others similarly situated, is properly appointed as the Class Representative for purposes of  
 11 settlement only.

12       8. The Settlement Class meets all requirements of Federal Rules of Civil Procedure,  
 13 including Rules 23(a) and (b)(3) for certification of the Settlement Class for purposes of  
 14 settlement only, including: (a) numerosity; (b) commonality; (c) typicality; (d) adequacy of the  
 15 Class Representative and Class Counsel; (e) predominance of common questions of fact and law;  
 16 and (f) superiority.

17       9. Having considered the factors set forth in Federal Rules of Civil Procedure, Rule  
 18 23(g)(1), the Court finds that Class Counsel are properly appointed to represent the Settlement  
 19 Class Members for purposes of settlement only and they have fairly and adequately represented  
 20 the Settlement Class for purposes of entering into and implementing the settlement.

21       10. The Court has again reviewed the notice and accompanying documents that were  
 22 sent or made available to the Settlement Class Members and finds that the “best practicable”  
 23 notice was given to the Settlement Class and that the notice was “reasonably calculated” to (a)  
 24 describe the Action and the Plaintiff’s and each Settlement Class Member’s rights in it, and (b)  
 25 apprise Settlement Class Members and interested parties of the pendency of the Action and of  
 26 their right to be excluded from the settlement and the Settlement Class or to have their objections  
 27 to the settlement heard. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 810 (1985). The  
 28 Court further finds that Settlement Class Members were given a reasonable opportunity to opt out

1 of the Action and that they were adequately represented by Plaintiff and Class Counsel. *See Id.*  
 2 The Court thus reaffirms its findings that the notice given to the Settlement Class satisfies the  
 3 requirements of due process and holds that it has personal jurisdiction over all Settlement Class  
 4 Members.

5       11. The Stipulation and this Judgment are not admissions of liability, fault or  
 6 wrongdoing by Defendant or the Released Parties, or a finding of the validity of any claims in the  
 7 Action or of any wrongdoing or violation of law by Defendant or the Released Parties. Neither  
 8 this Judgment, nor any of its terms or provisions, nor any of the negotiations or proceedings  
 9 connected with it, shall be offered as evidence or received in evidence in any pending or future  
 10 civil, criminal, or administrative action or proceeding to establish any liability of, or admission by  
 11 Defendant, the Released Parties, or any of them. Notwithstanding the foregoing, nothing in this  
 12 Judgment shall be interpreted to prohibit the use of this Judgment in a proceeding to consummate  
 13 or enforce the Stipulation, the Final Approval Order, or this Judgment, or to defend against the  
 14 assertion of Released Claims in any other proceeding, or as otherwise required by law.

15       12. Defendant is hereby ordered to comply with the terms of the Stipulation of  
 16 Settlement.

17       13. Upon the Effective Date, and subject to fulfillment of all of the terms of the  
 18 Stipulation, each and every Releasing Party shall be permanently barred and enjoined from  
 19 initiating, asserting and/or prosecuting any Released Claim against any Released Party in any  
 20 court or any forum.

21       14. The Plaintiff and all Settlement Class Members shall, as of the Effective Date,  
 22 conclusively be deemed to have acknowledged that the Released Claims may include claims,  
 23 rights, demands, causes of action, liabilities, suits, damages, losses or injury that are not known or  
 24 suspected to exist as of the Effective Date. The Plaintiff and all Settlement Class Members  
 25 nonetheless release all such Released Claims against the Released Parties. Further, as of the  
 26 Effective Date, the Plaintiff and all Settlement Class Members shall be deemed to have waived  
 27 any and all protections, rights and benefits of California Civil Code section 1542 and any  
 28 comparable statutory or common law provision of any other jurisdiction.

1       15. Upon the Effective Date, and subject to fulfillment of all of the terms of the  
2 Stipulation, the Court hereby dismisses with prejudice the Action, and all Released Claims against  
3 each and all Released Parties and without costs to any of the Parties as against the others.  
4 Notwithstanding the foregoing, this Order does not dismiss any claims that have been or may be  
5 asserted in the future by any persons or entities who have validly and timely requested exclusion  
6 from the Settlement Class.

7       16. Without affecting the finality of the Judgment, the Court reserves jurisdiction over  
8 the implementation, administration and enforcement of this Judgment, the Final Approval Order  
9 and the Stipulation, and all matters ancillary thereto.

10      17. The Parties are hereby authorized without needing further approval from the Court,  
11 to agree to and adopt such modifications and expansions of the Stipulation, including without  
12 limitation, the forms to be used in the process of distributing settlement payments, which are  
13 consistent with this Judgment and do not limit the rights of Settlement Class Members under the  
14 Stipulation.

15      18. For the reasons set forth in the Final Approval Order, the objections to the  
16 Stipulation and approval of this settlement are expressly overruled.

17      19. All other relief not expressly granted to the Settlement Class Members is denied.

18      20. Within thirty (30) days after all Settlement Awards have been paid to all Settlement  
19 Class Members, Plaintiff shall file a compliance report with the Court. The report shall include a  
20 declaration from the Settlement Administrator specifying the amounts remaining in the Reserve  
21 Fund, if any. Assuming any funds remain, Plaintiff shall also file a request to confirm distribution  
22 of any such funds to the identified *cy pres* recipient, the Institute on Aging.

23      IT IS SO ORDERED, ADJUDGED AND DECREED.

24  
25 DATED: July 12, 2016

  
Honorable Vince G. Chhabria  
United States District Judge

# **EXHIBIT 1**

ClaimID	Patient Name	Responsible Party Name	City	State	Opt Out Date
ARN-200081632	LOTTIE LACH	JOANN LACH	HERMOSA BEACH	CA	05/02/2016
ARN-200049356	JOYCE BINGHAM	JEAN JONES	PLEASANT HILL	CA	05/03/2016
ARN-100041027	JOHN LECHER	<i>self</i>	CAMARILLO	CA	05/05/2016
ARN-200004182	MARVIN SMITH	CLINTON PARKS	SCOTTS VALLEY	CA	05/05/2016
ARN-200015931	KATHLEEN HULBURD	TRICIA KRAMER & JAMES HULBURD	SAN MATEO	CA	05/05/2016
ARN-200058940	LA VEDA GARDNER	MARGARET DAMALAK	COVINA	CA	05/05/2016
ARN-200000667	AURELIA RUIZ	SYLVIA & STANLEY FRIEDMAN	LOS GATOS	CA	05/06/2016
ARN-200017390	SHARLENE URBAN	JOYCE URBAN	SAN JUAN CAPISTRANO	CA	05/06/2016
ARN-100000541	PATRICIA WOOD	<i>self</i>	IRVINE	CA	05/09/2016
ARN-200052217	WILLIAM KENNER	CINDI KENNER	SAMMAMISH	WA	05/09/2016
ARN-200070690	PAUL NOMURA	CARL NOMURA	LAFAYETTE	CA	05/09/2016
ARN-100032591	RUTH LEBAS	<i>self</i>	SAN JOSE	CA	05/10/2016
ARN-100032699	HOWARD LEBAS	<i>self</i>	SAN JOSE	CA	05/10/2016
ARN-200011138	JUANITA GARCIA	CECILIA GARCIA	SANTA CRUZ	CA	05/10/2016
ARN-200064363	JAMES GOLEC	RICHARD GOLEC	LAKE ARROWHEAD	CA	05/10/2016
ARN-200043277	ELIZABETH WEDDLE	PENELOPE BLACK	WALNUT CREEK	CA	05/12/2016
ARN-200070223	BETTY VAIL	BRIAN VAIL	PARADISE	CA	05/12/2016
ARN-100087043	JOHN PATTON HARLESS	<i>self</i>	IRVINE	CA	05/13/2016
ARN-200068938	LORRAINE KELLER	MARY RIES	SAN CLEMENTE	CA	05/13/2016
ARN-200011910	GARY GROEBLI	CHRISTINE PERRIS	SAN CARLOS	CA	05/14/2016
ARN-200018809	IRIS RADER	BRENDA GRAHAM	CHINO	CA	05/14/2016
ARN-200013041	BOB FERN	JANE LANGLEY	PACIFIC PALASADES	CA	05/17/2016
ARN-200001892	PATRIA CRUZ	FE LANGDON	MOUNTAIN VIEW	CA	05/19/2016
ARN-200078380	BEULAH CURRY	CHRIS VAN HOOK	PACIFIC PALASADES	CA	05/19/2016
ARN-200084216	STANLEY BINKLEY	ELIZABETH BINKLEY	DAVIS	CA	05/19/2016
ARN-100082890	EDNA LOUISE PERDUE	THOMAS ROBINSON	PEORIA	AZ	05/20/2016
ARN-200027808	CECILIA VILLARROEL	LUCIA MONTANO	IRVINE	CA	05/20/2016
ARN-100044689	EMMANUEL PETERSEN	KATHLEEN PETERSEN	FAIR OAKS	CA	05/23/2016
ARN-100124259	ROSALIE STEWART	<i>self</i>	SAN JUAN CAPISTRANO	CA	05/23/2016
ARN-200062913	JOYCE ROY	BARBARA LESNESKI & SUZANNE RUIZ	SAN CLEMENTE	CA	05/23/2016
ARN-100093515	RACHEL MONCHARSH	LOTTIE MONCHARSH	SUNNYVALE	CA	05/24/2016
ARN-200058762	VERNA COLLIER	ANN HANDLER	PACIFIC PALASADES	CA	05/26/2016
(ARN-100054331)					
ARN-200072811	MICHAEL VREVICH	NICHOLAS VREVICH	KENOSHA	WI	05/27/2016
ARN-200075314	ELAINE HELBOCK	COLETTE HELBOCK	LOS ANGELES	CA	05/30/2016
ARN-200013025	LILLIAN GUTNER	KAREN BLONZ	KENSINGTON	CA	05/31/2016
ARN-200018990	ELIZABETH HEATON	JOSEPH HEATON	WILTON	CA	05/31/2016
ARN-200028200	JOHN ROSS	ELIZABETH ROSS	LOS ALTOS	CA	05/31/2016
ARN-200045628	ALMA KING	SHARON BARRIER	IRVINE	CA	05/31/2016
ARN-200048562	ROLAND VANVALKENBURGH	MARILYN SPAUN	GLENDORA	CA	05/31/2016
ARN-200074628	KAY ROWE	HEATHER QUINLAN	WINCHESTER	CA	05/31/2016
ARN-200079646	ARRAH WOLFE	ELAINE HASBROOK	LAFAYETTE	CA	05/31/2016
(ARN-100086039)					
ARN-200071904	BETTY SMITH	JANET MCALLISTER	MILL VALLEY	CA	06/01/2016
(ARN-100074103)					
ARN-100026834	MARY MACDONALD	JAMES MACDONALD	DAVIS	CA	06/03/2016